

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B9-PLR-127423-02

Date:

August 9, 2002

Re:

Legend

Grantors =

Trust =

Daughter =

Son =

Trust 1 =

Trust 2 =

Date 1 =

Company =

X =

Accountant =

Year 1 =

Year 2 =

Dear :

This is in response to your letter dated May 15, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the Generation-Skipping Transfer (GST) exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: Grantors created Trust for the benefit of Daughter and Son and their respective issue. Trust directs the trustee to divide the trust into two separate sub-trusts, Trust 1 with Daughter as the primary beneficiary and Trust 2 with Son as the primary beneficiary. Each of the sub-trusts are governed by the provisions described below.

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Article III, paragraph A of Trust provides that the trust will terminate when the person for whom the trust is held (primary beneficiary) dies. All properties of the trust will then pass and be paid (1) to the primary beneficiary's issue, per stirpes, then living; or (2) if there is none, to the then living issue, per stirpes, of the primary beneficiary's closest lineal ascendant who has issue then living and who is an issue of Grantors' or, if there is none, to the Grantors' then living issue, per stirpes; or (3) if the Grantors have no issue then living, one-half to each of the Grantors' heirs at law, determined as of that time.

Article III, paragraph B provides net income and principal of the trust, in whole or part, may be paid to any primary beneficiary and the primary beneficiary's then living issue as the trustee determines necessary for that person's health, support, maintenance, and education in the standard of living to which that person is accustomed.

On Date 1, Grantors transferred 4,750 shares of stock in Company valued at X to Trust 1 and to Trust 2. Grantors reported the gifts on timely filed United States Gift (and Generation-Skipping Transfer) Tax Returns (Form 709) and elected to treat the gifts as made one-half by each under § 2513 of the Internal Revenue Code. Accountant, who prepared the returns, failed to make any allocation of the GST exemption for the value of the property transferred to the trusts. Grantors first became aware of Accountant's failure to make the allocation of the GST exemption for Year 1 while reviewing a draft of gift tax returns for transfers made in Year 2. Grantors realized that the GST exemption summary for the Year 2 return did not reflect any use of the exemption in Year 1.

Grantors have requested the following rulings: (1) an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 to make allocations of their GST exemption for their transfers to Trust 1 and Trust 2; and (2) that such allocations shall be made based on the value of the property transferred to Trust 1 and Trust 2 as of the date of the original transfers.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

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Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

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Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantors are granted an extension of time of 60 days from the date of this letter to make allocations of Grantors' available GST exemption, with respect to Grantors' transfers to Trust 1 and Trust 2. The allocations will be effective as of Date 1, the date of the transfers to the trust, and the gift tax value will be used in determining the amount of GST exemption to be allocated to Trust 1 and Trust 2.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The allocations should be made on a supplemental Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

Sincerely,

William P. O'Shea

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter